

GUERNSEY STATUTORY INSTRUMENT

2008 No. 37

**The Companies (Transitional Provisions)
Regulations, 2008***Made*24th June 2008*Coming into operation*1st July, 2008*Laid before the States*

, 2008

THE COMMERCE AND EMPLOYMENT DEPARTMENT, in exercise of the powers conferred on it by sections 535, 538 and 542 of the Companies (Guernsey) Law, 2008 and all other powers enabling it in that behalf, hereby makes the following Regulations:-

Purpose of regulations.

1. These regulations make savings and transitional provisions -
 - (a) in connection with the commencement of the Companies (Guernsey) Law, 2008 ("**the new Law**"), and
 - (b) for the purposes of effecting the transition to the new Law from the Companies (Guernsey) Law, 1994¹ ("**the 1994 Law**"), and from the Ordinances

¹ Order in Council No. XXXIII of 1994; amended by No. XIV of 1996; No. I of 2001; No. II of 2002; No. IX of 2006; and by Ordinance No. X of 1997; Ordinance No. XXXIII of 2003 and Ordinances XI, XII and XVIII of 2006. For commencement,

enacted under the Companies (Enabling Provisions) (Guernsey) Law, 1996², which are repealed by the new Law.

Section 15 - memorandum of incorporation.

2. (1) For the purposes of section 15 of the new Law, and notwithstanding the provisions of section 38 of the new Law, an existing company may by special resolution -

- (a) make such amendments to its memorandum as may be necessary to ensure compliance with section 15(2), and
- (b) make provision in its memorandum for any matter mentioned in section 15(7) or alter any provision in its memorandum mentioned in section 15(7).

(2) Without prejudice to paragraph (1), where any provision of an existing company's memorandum -

- (a) was valid and enforceable under the provisions of the 1994 Law and the other relevant principles of law in force immediately prior to the date of commencement of the new Law, but
- (b) is rendered invalid and unenforceable by any provision of the new Law,

see section 124 below. No. XIV of 1996 came into force on the 1st March, 1997 (Ordinance No. VI of 1997), No. I of 2001 on the 1st June, 2001 (Ordinance No. IV of 2001) and No. II of 2002 on the 21st January, 2002.

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Order in Council No. XII of 1996.

then that provision of the new Law does not apply in relation to that provision of the company's memorandum until the 1st January, 2010.

Section 16 - articles of incorporation.

3. (1) For the purposes of section 16 of the new Law -
 - (a) an existing company shall, on the date of commencement of the new Law, be deemed to have disapplied the standard articles in accordance with subsection (3) of that section, and
 - (b) that disapplication shall be deemed to be set out in the company's articles.

- (2) Where any provision of an existing company's articles -
 - (a) was valid and enforceable under the provisions of the 1994 Law and the other relevant principles of law in force immediately prior to the date of commencement of the new Law, but
 - (b) is rendered invalid and unenforceable by any provision of the new Law,

then in relation to that provision of the company's articles and until the 1st January, 2010 -

- (i) that provision of the new Law does not apply, and

- (ii) the provisions of the 1994 Law and the other relevant principles of law in force immediately prior to the date of commencement of the new Law shall continue to apply.

Section 60 - amalgamation of bodies corporate.

4. (1) For the purposes of Part VI of the new Law, an amalgamation of two or more bodies corporate which, on the date of commencement of the new Law, has been initiated but not completed under the Amalgamation of Companies Ordinance, 1997³ may, notwithstanding the provisions of Part VI of the new Law, be continued and completed subject to and in accordance with the provisions of that Ordinance as they had effect immediately before the date of commencement of the new Law.

(2) Where an amalgamation is continued and completed by the bodies corporate by virtue of paragraph (1), the bodies corporate shall be deemed to have amalgamated in accordance with Part VI of the new Law, and the provisions of the new Law shall, subject to paragraph (3), have effect in relation to the amalgamated body corporate accordingly.

(3) The Registrar shall apply the provisions of sections 69 and 70 of the new Law in relation to the amalgamated body corporate with any modifications necessary to give effect to paragraph (1).

(4) For the purposes of paragraph (1) an amalgamation is deemed to have been initiated on the date of publication in La Gazette Officielle of the notice of the proposed amalgamation required by section 4(4)(b) of the Amalgamation of Companies Ordinance, 1997 or, in the case of a short form

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Recueil d'Ordonnances Tome XXVII, p. 305.

amalgamation within the meaning of section 5 of that Ordinance, by section 5(3)(a) of that Ordinance.

Section 75 - migration of companies.

5. (1) For the purposes of Part VII of the new Law, a migration of a company which, on the date of commencement of the new Law, has been initiated but not completed under the Migration of Companies Ordinance, 1997⁴ may, notwithstanding the provisions of Part VII of the new Law, be continued and completed subject to and in accordance with the provisions of that Ordinance as they had effect immediately before the date of commencement of the new Law.

(2) Where a migration is continued and completed by a company by virtue of paragraph (1), the company shall be deemed to have migrated in accordance with Part VII of the new Law, and the provisions of the new Law shall, subject to paragraph (3), have effect in relation to the migrated company accordingly.

(3) The Registrar shall apply the provisions of sections 83 and 97 of the new Law in relation to the migrated company with any modifications necessary to give effect to paragraph (1); and section 98 of the new Law has effect as if the words "Not less than 28 days after the day on which the Registrar gave notice under section 97(3)" were omitted.

(4) For the purposes of paragraph (1) a migration is deemed to have been initiated -

- (a) in the case of an overseas company, on the date of the receipt by the Commission of the company's application, made in accordance with section 5 of the Migration of Companies Ordinance, 1997, for

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Recueil d'Ordonnances Tome XXVII, p. 356.

the Commission's consent for the company's registration as a Guernsey company, or

- (b) in the case of a company registered in the old Register of Companies, on the date of publication in La Gazette Officielle of the notice of the company's proposed migration required by section 11(b) of the Migration of Companies Ordinance, 1997.

Section 132 - shadow directors.

6. Section 132(3) of the Law does not apply in relation to any shadow director until the 1st July, 2009.

Section 138 - director's consent and declaration of eligibility.

7. Section 138(1) of the new Law does not apply to a person in respect of a directorship held by him immediately prior to the date of commencement of the new Law until the 1st January, 2009; and accordingly a failure before that date to comply with section 138(1) in respect of a directorship so held by a person does not render his appointment invalid.

Section 143 - register of directors.

8. Section 143(8) of the new Law does not apply in relation to an existing company until the 1st January, 2009; and for the avoidance of doubt a person shall not be guilty of an offence under that section in relation to a failure to comply with section 143 occurring before that date.

Section 145 - notification of change in directors.

9. Section 145(3) of the new Law does not apply in relation to an existing company until the 1st January, 2009; and for the avoidance of doubt a person shall not be guilty of an offence under that section in relation to a failure to comply

with section 145 occurring before that date.

Section 157 - exemption from liability and indemnification of directors.

10. (1) Section 157(1) and (2) of the new Law does not apply to an exemption from liability or indemnity provided before the date of commencement of the new Law until the 1st January, 2010.

(2) Accordingly -

(a) the validity and enforceability of any such exemption from liability or indemnity shall continue to be governed, until the 31st December, 2009, by the provisions of the 1994 Law and the other relevant principles of law in force immediately prior to the date of commencement of the new Law, and

(b) any such exemption from liability or indemnity -

(i) shall, after that date, be deemed to be void only to the extent necessary to ensure compliance with section 157(1) or (2), as the case may be, and

(ii) subject to that, may be read as if it were lawful to the fullest extent permitted by the new Law.

Section 163 - avoidance of transactions.

11. Section 163 of the new Law⁵ does not apply to any transaction entered into before the 1st July, 2008.

Section 171 - duties of secretaries.

12. Section 171 of the new Law does not apply in relation to the secretary of a company until the 1st January, 2010.

Section 173 - register of secretaries.

13. Section 173(7) of the new Law does not apply in relation to an existing company until the 1st January, 2009; and for the avoidance of doubt a person shall not be guilty of an offence under that section in relation to a failure to comply with section 173 occurring before that date.

Section 175 - resolutions.

14. (1) For the purposes of Part XIII of the new Law and any other provision of the new Law relating to resolutions, a resolution of a company of whatever description which, on the date of commencement of the new Law, has been initiated but not yet passed may, notwithstanding the provisions of Part XIII of the new Law, be passed subject to and in accordance with the provisions of the 1994 Law and the other relevant principles of law in force immediately prior to the date of commencement of the new Law.

(2) Where a resolution is passed by a company by virtue of paragraph (1), the resolution -

- (a) shall be deemed to have been passed in accordance with the provisions of the new Law, which shall apply accordingly, but

⁵ Section 163 was substituted by the Companies (Guernsey) Law, 2008 (Amendment) Ordinance, 2008.

(b) has the same legal effect, and is valid and enforceable, as if the provisions of the 1994 Law were still in force.

(3) For the purposes of paragraph (1) a resolution is deemed to have been initiated when notice of it is given in accordance with the provisions of the 1994 Law and the other relevant principles of law in force immediately prior to the date of commencement of the new Law.

Section 207 - notice of meetings.

15. (1) Notice of a general meeting of a company given prior to the date of commencement of the new Law shall, notwithstanding the provisions of the new Law, be deemed to be valid if it was given in accordance with, and complied with the requirements of, the provisions of the 1994 Law and the other relevant principles of law in force immediately prior to the date of commencement of the new Law.

(2) Accordingly, a general meeting of a company held and convened pursuant to such an notice is deemed to have been duly held and convened.

Section 262 - auditors' report.

16. (1) In relation to an existing company the financial year of which began before the date of commencement of the new Law and which will end after that date, the auditors' report in respect of that financial year may be prepared in compliance with section 64(2) of the 1994 Law and need not be prepared in compliance with section 262(2) of the new Law.

(2) For the purposes of section 64(2) of the 1994 Law as it has effect by virtue of paragraph (1), and for the avoidance of doubt, the reference in paragraph (a) of that section to "any relevant enactment for the time being in force"

does not include section 262(2) of the new Law.

Section 283 - no conversion into stock.

17. Section 283 of the new Law does not apply in relation to an existing company until the 1st January, 2010.

Section 287 - power of company to alter share capital.

18. (1) Notwithstanding the repeal by the new Law of section 37(1)(a) of the 1994 Law, an existing company may after the date of commencement of the new Law by ordinary resolution alter its memorandum so as to increase its share capital by creating new shares of such amount as it thinks expedient.

(2) Section 287(4), (5) and (6) of the new Law applies in respect of a resolution under paragraph (1) as it applies to in relation to a resolution under section 287.

Sections 291, 292 and 293 - power of directors to issue shares.

19. In relation to the powers of the directors of an existing company to issue shares in the company or to grant rights to subscribe for, or to convert any security into, shares in the company, and until the 1st January 2010 -

- (a) sections 291, 292 and 293 of the new Law do not apply, and
- (b) the provisions of the 1994 Law and the other relevant principles of law in force immediately prior to the date of commencement of the new Law shall continue to apply.

Section 353 - striking defunct company off Register of Companies.

20. Where in relation to an existing company -

- (a) the Greffier has served notice under section 76(2) of the 1994 Law that, at the expiration of a period of 2 months beginning on the date of the notice, the company's name will be struck off the old Register of Companies and the company will be dissolved, unless cause is previously shown to the contrary, but
- (b) on the date of commencement of the new Law, the name of the company has not been struck off that Register,

then, at the expiration of that period or as soon as reasonably practicable thereafter, the Registrar shall, unless cause to the contrary has been shown, strike the company off the new Register of Companies and, upon such striking off, the company shall be dissolved; and the provisions of the new Law shall have effect in relation to that company accordingly.

Section 355 - striking defaulting company off Register of Companies.

21. Where on the date of commencement of the new Law an existing company has not delivered a copy of its annual return in respect of the calendar year 2007 to the Greffier in compliance with section 28(1) of the 1994 Law then the company shall be deemed for the purposes of section 355(1)(a) of the new Law, on that date, to have failed to deliver to the Registrar an annual validation in accordance with the requirements of section 235; and the provisions of section 355 of the new Law shall apply in respect of that company accordingly.

Section 427 - Disqualification orders.

22. (1) Notwithstanding the repeal by the new Law of section 67A of the 1994 Law, that section shall continue to have effect in relation to any person

whose relevant conduct occurred wholly before the date of commencement of the new Law.

"Relevant conduct" means the conduct of the person rendering him unfit to be concerned in the management of a company and forming the basis of the application for the disqualification order.

(2) Accordingly, an application for a disqualification order based on a director's relevant conduct occurring wholly before the date of commencement of the new Law may continue to be made, heard and determined under section 67A in all respects as if the 1994 Law were still in force.

(3) However, any disqualification order made under section 67A by virtue of this regulation shall be treated for all purposes as if it were a disqualification order made under section 427 of this Law and accordingly (and without limitation) shall be registered by the Registrar in the Register of Disqualification Orders kept under section 497 of the new Law.

Part VII of the 1994 Law - reduction of share capital.

23. (1) Where an existing company has, prior to the date of commencement of the new Law, passed a special resolution under section 45 of the 1994 Law for a reduction of its share capital, then -

- (a) the company may after that date apply to the Court under section 46 of the 1994 Law for an order confirming the reduction, and
- (b) the Court may hear and determine the application,

in all respects as if the 1994 Law were still in force.

(2) The reduction in share capital, and any order of the Court made in respect of it, shall have effect as if the provisions of the 1994 Law and the other relevant principles of law in force immediately prior to the date of commencement of the new Law were still in force; and those provisions shall have effect accordingly.

Interpretation.

24. (1) In these regulations -

"**existing company**" means a company which, on the date of commencement of the new Law, is registered in the old Register of Companies,

"**Greffier**" means Her Majesty's Greffier,

"**the new Law**" means the Companies (Guernsey) Law, 2008,

"**the new Register of Companies**" means the Register of Companies to be kept and maintained by the Registrar under section 496 of the new Law,

"**the old Register of Companies**" means the Register of Companies within the meaning of section 117(1) of the 1994 Law,

"**the other relevant principles of law**" include the provisions of the Ordinances enacted under the Companies (Enabling Provisions) (Guernsey) Law, 1996⁶, which are repealed by the new Law,

"**the 1994 Law**" means the Companies (Guernsey) Law, 1994⁷,

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Order in Council No. XII of 1996.

"Registrar" means the holder of the office of the Registrar of Companies appointed under section 495 of the new Law,

and, except where the context excludes, other expressions have the same meaning as in the new Law.

(2) References in these regulations to an enactment are references thereto as from time to time amended, repealed and replaced (with or without modification), extended or applied.

(3) The Interpretation (Guernsey) Law, 1948⁸ applies to the interpretation of these regulations.

Citation.

25. These regulations may be cited as the Companies (Transitional Provisions) Regulations, 2008.

Commencement.

26. These regulations shall come into force on the 1st July, 2008.

Dated this 24th day of June, 2008

⁷ Order in Council No. XXXIII of 1994; amended by No. XIV of 1996; No. I of 2001; No. II of 2002; No. IX of 2006; and by Ordinance No. X of 1997; Ordinance No. XXXIII of 2003 and Ordinances XI, XII and XVIII of 2006. For commencement, see section 124 below. No. XIV of 1996 came into force on the 1st March, 1997 (Ordinance No. VI of 1997), No. I of 2001 on the 1st June, 2001 (Ordinance No. IV of 2001) and No. II of 2002 on the 21st January, 2002.

⁸ Ordres en Conseil Vol. XIII, p. 355.



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For and on behalf of the Department

EXPLANATORY NOTE

(This note is not part of the regulations)

These regulations prescribe savings and transitional provisions in connection with the commencement of the Companies (Guernsey) Law, 2008 and for the purposes of effecting the transition to the 2008 Law from the Companies (Guernsey) Law, 1994 and from the Ordinances enacted under the Companies (Enabling Provisions) (Guernsey) Law, 1996, all of which are repealed by the 2008 Law.